

**Executive Officer Report
California Victim Compensation and Government Claims Board
Surcharge Criteria**

February 17, 2005

Action Requested

Staff recommends that the Board:

1. Adopt criteria to reduce the surcharge for claims approved that are greater than \$300,000, as specified;
2. Apply the proposed surcharge criteria to all claims approved since August 16, 2004;
3. Permit departments to request a reduction in the surcharge on a case-by-case basis by demonstrating that the surcharge assessed at the 15% rate or as proposed under the proposed criteria will cause significant financial hardship. DOF must concur that the surcharge creates a financial hardship for the department.
4. Adopt the decision that when claims arising from a court judgment include both principal and interest, only the principal should be used in calculating the surcharge, and further, that it be subject to the surcharge criteria proposed; and,
5. Require staff to report back in August of 2005 regarding the status of the surcharge collections and the amount of funding necessary to support the Government Claims Program.

Background

Senate Bill 1102 (Chapter 227, Statutes 2004) amended Government Code section 905.2 to authorize the Victim Compensation and Government Claims Board (Board) to assess a surcharge in an amount not to exceed 15 percent of an approved claim; the 15 percent surcharge was determined by reviewing the total dollar amount of claims allowed by the Board over a four-year period and comparing that amount to the revenue required to support the Government Claims Program. Staff have committed to closely monitoring actual revenues and to make adjustments annually to the percentages assessed to prevent collecting excess surcharge amounts.

The statute stated that the surcharge may be assessed against all claims paid after August 16, 2004. The statute was intended to provide the Board with flexibility in order to not unduly burden the departments with excessive surcharge amounts. However, the surcharge represents the primary source of funding for the Government Claims Program; effective July 1, 2004, there is no longer a direct General Fund appropriation to support this program. The revenue generated by the surcharge is deposited to the General Fund and appropriated as reimbursement in the annual Budget Act in support of the Board's Government Claims Program.

The language of the statute was enacted in a trailer bill to the 2004 Budget Act. Thus, most departments were not aware of the impending surcharge. The Executive Officer notified Department directors in a memorandum immediately following the enactment of the legislation. Beginning with the Board's August 27, 2004 meeting, the Board assessed a 15 percent surcharge on claims allowed and paid by departments pursuant to Government Code section 965.

Background (cont'd)

In addition, the surcharge was also incorporated and assessed against claims previously allowed by the Board paid pursuant to Government Code section 13928 via Assembly Bill 3118 (Chapter 475, Statutes 2004) that was signed by the Governor on September 10, 2004.

A number of departments have noted that imposition of the surcharge may have an impact on their budgets for fiscal year 2004-05. Those departments pointed out that the statute gives the Board discretion to reduce or eliminate the surcharge and have requested the Board exercise this discretion for certain approved claims.

As a result of these concerns and requests, Board staff explored the possibility of establishing criteria that would be used to determine the circumstances under which the 15% surcharge could be reduced equitably for all departments, without negatively impacting the funding necessary to support the Government Claims Program.

Delegations

Claims paid under agency delegations (Government Code section 935.6) and under statutorily delegated authority (Government Code section 935.7) are not subject to the surcharge because Board staff takes no action on them and the surcharge is intended to recoup operating costs.

Surcharge Criteria

In reviewing the departmental requests for surcharge reductions, the following issues were identified for consideration.

- The Department of Finance has expressed concern on behalf of small departments that surcharges levied on large dollar claims could pose a significant financial hardship and impact the mission and function of those departments.
- Larger departments, especially those with more claims, have expressed concern that the surcharge process be applied fairly and that they not bear the burden of the surcharge merely due to their larger budgets.
- On occasion, claims arise because departments were unable to fully execute a contract or a contract amendment because of an Executive Order or administrative changes to the state contracting process. The departments almost universally support the vendors in these claims and agree that the Board should allow the claim. The concern of departments when considering the implications of the surcharge is that, essentially, the claim occurred not because the department managed the contract process improperly or inefficiently, but because of sudden unanticipated changes. However, the Government Claims Program does incur administrative costs to process these claims.
- For stale-dated warrants, the claimant is responsible for the delay and not the department. In this circumstance, it seems equitable that there should be no surcharge on the department. The Board is planning to request "clean-up" legislation for the next Budget Trailer bill to exempt departments from the surcharge when stale-dated warrants are reissued. All stale-dated warrants are paid as legislative pay claims and, as such, staff do not anticipate that any claims paid during this fiscal year will be paid until after the proposed clean-up language has been enacted.

Board staff acknowledges that the criteria under which the surcharge would be reduced or eliminated must be carefully considered and, if implemented, judiciously exercised. The intent of the surcharge was to provide a significant portion of the revenue required to support the administrative costs of the Government Claims Program

Surcharge Criteria (cont'd)

Staff determined that departments should come before the Board on a case-by-case basis to demonstrate that the surcharge assessed at the 15% rate or as proposed under the new criteria will cause significant financial hardship, with concurrence from DOF.

Staff recommend that the proposed surcharge criteria should be applied to all claims approved and paid since August 16, 2004. Staff determined that approved claims equal to or less than \$300,000 should continue to be assessed the full 15% surcharge. All claims with approved amounts greater than \$300,000 should be charged the following amounts, which effectively assesses a lower rate for higher value claims, without jeopardizing the funding required to support the Government Claims Program.

Approved Claim Amount	Surcharge
\$300,001 to \$399,999	\$45,000
\$400,000 to \$499,999	\$50,000
\$500,000 to \$599,999	\$55,000
\$600,000 to \$699,999	\$60,000
\$700,000 to \$799,999	\$65,000
\$800,000 to \$899,999	\$70,000
\$900,000 to \$999,999	\$75,000
\$1,000,000 +	\$80,000

Some claims are filed to obtain payment of awards made against the State in a court of law. Due to the length of time required to litigate and adjudicate issues, judgments may include an order for the payment of interest. Staff recommend that when claims arising from a court judgment include both principal and interest, only the principal should be used in calculating the surcharge, subject to the surcharge criteria above.

Staff Recommendation

1. Adopt criteria to reduce the surcharge for claims in which the total approved is greater than \$300,000 or as a result of a court order, as specified in this report.
2. Apply the proposed surcharge criteria to all claims approved since August 16, 2004.
3. Permit departments to request a reduction in the surcharge on a case-by-case basis by demonstrating that the surcharge assessed at the 15% rate or as proposed under the new criteria will cause significant financial hardship. DOF must concur that the surcharge creates a financial hardship for the department.
4. Adopt staff recommendation that when claims arising from a court judgment include both principal and interest, only the principal should be used in calculating the surcharge, and further, that it be subject to the surcharge criteria above.
5. Require staff to report back to the Board in August of 2005 regarding the status of the surcharge collections and the amount of funding necessary to support the Government Claims Program.